

# **EXHIBIT 2**

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN FRANCISCO

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5 THE PEOPLE OF THE )  
6 STATE OF CALIFORNIA, )  
7 Plaintiff, ) Court No. 21001863  
8 vs. ) Pages 1 - 14  
9 RYAN WAER, )  
Defendant. )

**REPORTER'S TRANSCRIPT OF  
PROCEEDINGS**

Tuesday, March 2, 2021

17 BEFORE: THE HONORABLE RICHARD C. DARWIN, JUDGE  
18 Department 9, San Francisco, California

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28 | Reported by: KERI L. CRITTENTON, CSR NO. 6914

Appearances  
Page 1 of 1  
--ooOo--

For the People:

Chesa Boudin, District Attorney  
350 Rhode Island Street  
North Building, Suite 400N  
San Francisco, California 94103  
By: **MICHELE BRASS**, Assistant District Attorney

For the Defendant RYAN WAER:

Manohar Ragu, Public Defender  
555 Seventh Street - Suite 205  
San Francisco, California 94103  
By: KELSEY RYBURN, Assistant Public Defender

1 MARCH 2, 2021 - MORNING SESSION

2 --oo--

3 The above-entitled matter came on this day for  
4 Ruling before Honorable RICHARD C. DARWIN, Judge of the  
5 Superior Court.

6 The People were represented by MICHELE BRASS,  
7 Deputy District Attorney of San Francisco.

8 The Defendant, RYAN WAER, was present and  
9 represented by KELSEY RYBURN, Deputy Public Defender of  
10 San Francisco.

11 KERI L. CRITTENTON, C.S.R., Official Court  
12 Reporter, was present and acting.

13 The following proceedings were had:

14 P R O C E E D I N G S

15 --oo--

16 THE COURT: This is line 500 on the morning  
17 calendar. We're on the record.

18 Can I have an appearance by the People, please?

19 MS. BRASS: Yes. Michelle Brass on behalf of the  
20 People appearing remotely.

21 THE COURT: Can I have an appearance by --

22 MS. RYBURN: Kelsey Ryburn --

23 THE COURT: Go ahead.

24 MS. RYBURN: Kelsey Ryburn for Mr. Waer, who is  
25 personally present in the courtroom, appearing remotely.

26 THE COURT: All right. Both counsel are, I  
27 think -- as they noted are appearing by Zoom. Mr. Waer is  
28 present personally.

1 wanted to make the argument. You have made your record.  
2 You elucidated all these issues yesterday. I'm going to  
3 rule at this point. I know you want to argue again. I'm  
4 saying, "No, thank you." The Court does not need further  
5 argument.

6 Let me proceed. California law unequivocally  
7 permits Courts to impose conditions of OR release that  
8 implicate the constitutional rights of a defendant, and  
9 that's in re: York, and that makes it quite plain. I'm  
10 going to quote briefly from in re: York.

11 Quote, "We reject petitioner's contention and  
12 conclude that Penal Code Section 1318 authorizes the  
13 imposition of conditions that may implicate a defendant's  
14 constitutional rights," closed quote, provided those  
15 conditions are reasonable under the circumstances and are  
16 not capricious and that is good law binding on this Court.

17 The reasonableness of an OR release condition  
18 depends upon the intrusiveness of the State conduct and  
19 the strength of the State's interest in imposing the  
20 restrictions under the circumstances.

21 That's also according to York. Again, that's  
22 9 Cal.4th 1133. The spot cite for that last quote was  
23 1150.

24 Here -- just in terms of whether they're  
25 permissible, I find the conditions sought by the People  
26 here are permissible under York. The nature and  
27 seriousness of the charges clearly implicate public  
28 safety.

1                   The defendant is charged with -- again, according  
2 to the incident report, as admitted under Miranda, after  
3 being Mirandized, that he was attempting to meet up with a  
4 14-year-old for purposes of engaging in sexual acts. It's  
5 beyond dispute that such acts threaten the safety of the  
6 public, particularly the population of underage children,  
7 and it's beyond dispute in this Court's view that the  
8 government has a strong interest in prohibiting such and  
9 preventing such conduct, so the conditions sought, which  
10 are warrantless search of his person, residence, vehicle,  
11 and electronic devices including phones, computers, hard  
12 drives, and other storage devices, is certainly reasonably  
13 related to that State interest and while I will -- I will  
14 concede that the particular request is intrusive, the  
15 Court finds that condition is warranted by the interest in  
16 preventing other potential underage -- harm to other  
17 potential underage victims.

18                   There is also a request for a ban on the use of  
19 WhatsApp and MeetMe, two specific messaging applications.  
20 I believe that's also reasonable under the circumstances  
21 for the same reasons as previously stated.

22                   Defense does argue that the ban on using those  
23 specific messaging apps is improper because it constitutes  
24 a First Amendment violation. The Court doesn't agree.  
25 The Court -- York makes plain that conditions of release  
26 may implicate constitutional rights in the first place,  
27 and the Court finds that the prohibition is reasonable  
28 under the circumstances and doesn't prohibit the defendant

1 from continuing to express himself on other media  
2 platforms provided that the speech is protected,  
3 noncriminal speech, and I also find that prohibiting his  
4 use of just those two apps doesn't meaningfully detract  
5 from his ability to communicate with counsel. He may  
6 still continue to communicate with counsel by a wide  
7 variety of methods including phone, Zoom, video, FaceTime,  
8 and in-person meetings.

9 Having reviewed the federal cases provided by the  
10 defendant it does appear that under certain circumstances  
11 requiring a defendant to turn over a login or password can  
12 implicate the defendant's Fifth Amendment rights against  
13 self-incrimination.

14 In the Court's view the act of providing a  
15 password is not testimonial in that it does not call upon  
16 the defendant to make use of the contents of his mind any  
17 more than being asked to turn over the key to a lock.  
18 However, in an abundance of caution the condition of  
19 release will not require the defendant to turn over his  
20 login credentials and passwords. I will instead require  
21 the defendant to do the following:

22 As previously mentioned, he's subject to a search  
23 condition, which means at any time of the day or night,  
24 with or without his consent, with or without a warrant,  
25 with or without reasonable suspicion or probable cause he,  
26 his vehicle, his residence, his person, and other areas  
27 under his direct control and his electronic devices are  
28 subject to search.

1                   The defendant must at the request of law  
2 enforcement when it comes to the electronic devices  
3 immediately access and log in to those devices, phone,  
4 computer, hard drives, USB drives, other storage devices  
5 by whatever means necessary, a thumbprint, facial  
6 recognition, password, and login credentials. He must log  
7 in to those devices and permit law enforcement to inspect  
8 and copy those devices per the search term.

9                   So he won't have to give those passwords and  
10 credentials to law enforcement, but he must on their  
11 request, if and when they come to him and ask for it, log  
12 in to those devices and allow them to review the contents  
13 and, if necessary, copy them.

14                   So those will be the terms and conditions of  
15 release. I don't believe there are any additional terms  
16 that were being requested, so those will be in addition to  
17 the previously ordered conditions of release.

18                   MS. RYBURN: Your Honor --

19                   THE COURT: Yes.

20                   MS. RYBURN: -- we would object to the defendant,  
21 Mr. Waer, being -- at the request of law enforcement be  
22 forced to unlock his devices. We're objecting under the  
23 Fourth, Fifth, and Sixth Amendment along with the  
24 Fourteenth. We assert that, again, your Honor, this is a  
25 work-around that implicates, again, the Fifth Amendment  
26 right, and we would object to it.

27                   THE COURT: Okay. Your objections are noted. I  
28 do overrule them based on the reasoning and case law that

## 1 CERTIFICATE OF OFFICIAL COURT REPORTER

2 STATE OF CALIFORNIA )  
3 COUNTY OF SAN FRANCISCO ) ss.  
 )4 I, KERI L. CRITTENTON, do hereby certify that I am  
5 a Certified Shorthand Reporter, and that at the time and  
6 place shown I recorded verbatim in shorthand writing the  
7 proceedings in the following described action completely  
8 and correctly to the best of my skill and ability:9  
10 COURT: IN THE SUPERIOR COURT OF  
11 THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO12 JUDGE: RICHARD C. DARWIN  
Department 9

13 ACTION NUMBER: 21001863

14 ACTION TITLE: THE PEOPLE OF THE STATE OF  
CALIFORNIA, Plaintiff,

15 vs.

16 RYAN WAER,  
17 Defendant.

18 DATE: March 2, 2021

19 I further certify that my shorthand notes have  
been transcribed into typewriting, and that the preceding  
20 pages, 1 through 14, inclusive, constitute an accurate and  
complete transcript of all my shorthand writing for the  
21 dates specified.22 Further, in said capacity, I have adhered to the  
Code of Civil Procedure Section 237(a)(2), First District  
Court of Appeal Miscellaneous Order 96-02 by sealing,  
23 through redaction, of all references to juror-identifying  
information, including but not limited to names, addresses  
24 and telephone numbers.

25 DATED: March 23, 2021

*Keri L. Crittenton*26  
27 KERI L. CRITTENTON, CSR NO. 6914  
OFFICIAL COURT REPORTER  
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